BEFORE THE

COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Investigation By The Department On Its Own Motion As To The Propriety Of The Rates And Charges Set Forth The Following Tariffs: M.D.T.E. Nos. 14 And 17, Filed With The Department On August 27, 1999, To Become Effective September 27, 1999, By New England Telephone And Telegraph d/b/a Bell Atlantic - Massachusetts	Docket No. D.T.E 98-57

INITIAL BRIEF OF RHYTHMS LINKS INC.

AND COVAD COMMUNICATIONS COMPANY

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EXECUTIVE SUMMARY

Since 1996, Bell Atlantic has been under an obligation to open its local monopoly to competition. In the last four years, a new breed of telecommunications provider – the competitive local exchange carriers (CLECs) – has brought competition and innovation to the local market, benefiting consumers with lower prices and a wide range of choice in local services. In particular, data CLECs are meeting the exploding demand for broadband services, offering residential and business customers in Massachusetts and throughout the country a wide range of innovative high speed data services. Data CLECs, like Rhythms Netconnections and Covad Communications Company, are deploying service faster, and in more parts of the nation, than any incumbent telephone company.

CLECs are beholden to the incumbent LEC for crucial inputs into their service offerings. Most important are loops, which carry communications to the end user, and collocation, which allows CLECs to interconnect with the incumbent's network. Unfortunately, due

to the unequal bargaining power between CLECs and the incumbents, new entrants must rely heavily on the regulatory process to ensure that incumbents "play fair" in opening their monopolies to competition. For data CLECs, whose principal competitor in the local market is often the incumbent itself, the risks of discriminatory treatment loom large. In Massachusetts, Bell Atlantic has both the incentive and the ability to raise its rivals' costs as much as possible. The revisions it has filed to its Tariff 17, ostensibly to bring itself into compliance with new federal rules, is an example of that behavior. As detailed in these Joint Comments, Bell Atlantic has placed terms, conditions, and prices in its tariff that have the intent and effect of stifling competition in Massachusetts, to the detriment of Bay State consumers.

In order to ensure that competitors of Bell Atlantic in Massachusetts are able to compete fairly and effectively, the Department must examine Tariff 17 closely and order Bell Atlantic to revise certain provisions. Specifically, as outlined below, Bell Atlantic has priced its collocation offerings unreasonably high by using pricing methodologies declared illegal by the Department and FCC. In addition Bell Atlantic has proposed anticompetitive collocation terms and conditions, such as discriminatory security parameters, that do not comply with Department or FCC rules, and are designed simply to run up competitors' costs in an effort to drive them from the market. Finally, Bell Atlantic has attempted to squelch competition in the advanced services industry by refusing to tariff loops for data providers, and denying access to information about its loop plant, in order to protect the incumbent's own monopoly and extend it into the new data marketplace.

By carefully scrutinizing Bell Atlantic's tariff proposal, the Department can protect Massachusetts consumers and guarantee them access to the widest possible variety of innovative new telecommunications services. Bell Atlantic's wholesale operation, which provides loops and collocation space to competitors, is fundamentally driven by the desire to advantage its affiliated retail operation in the marketplace. Tariff 17 is evidence of that desire, and Joint Commenters respectfully ask the Department to protect consumers and promote competition by taking the limited actions advocated below.

Table of Contents

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INITIAL BRIEF OF RHYTHMS LINKS INC.

AND COVAD COMMUNICATIONS COMPANY

Pursuant to the Department of Telecommunications and Energy's Order, Rhythms Link Inc. ("Rhythms") and Covad Communications Company ("Covad"), through their attorneys, respectfully submit their joint initial brief in the above captioned proceeding regarding Bell Atlantic-Massachusetts' ("BA-MA's) proposed Tariff No. 17. Rhythms and Covad urge the Department to require BA-MA to revise existing provisions of its tariff and incorporate additional provisions to comply with BA-MA's obligation under the Telecommunications Act of 1996 and the Federal Communications Commission's *Advanced Services Order*.

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INTRODUCTION

On August 27, 1999 New England Telephone and Telegraph Company, d/b/a Bell Atlantic-Massachusetts ("BA-MA") filed proposed tariffs M.D.T.E. Nos. 14 and 17 to become effective September 27, 1999. The Department suspended the effective date of these proposed tariffs until March 27, 2000. Rhythms Links, Inc. ("Rhythms") and Covad Communications Company ("Covad") (jointly "joint commenters") were granted intervenor status. Rounds of discovery were conducted and several parties, including the joint commenters, submitted pre-filed testimony which was admitted into evidence along with exhibits during evidentiary hearings held on December 13-17, 1999 and January 27-27, 2000. Pursuant to the Department's procedural schedule in this investigation, Rhythms and Covad files this initial brief.

Bell Atlantic-Massachusetts ("BA-MA"), has an affirmative obligation to provide collocation under Section 251(c)(6) of the Telecommunications Act of 1996 (the "Act"). Recognizing the critical role that collocation plays in the development of a competitive marketplace, the Federal Communications Commission ("FCC") has issued specific directives on the rates, terms and conditions on ILEC collocation provisioning. BA-MA must adhere to the rules and regulations established by the FCC for offering collocation in accordance with the obligations and requirements of the 1996 Act and the FCC's directives in the *Local Competition First Report and Order* and further clarifications of those obligations in the *Advanced Services Order* and the *UNE Remand Order.*

State commissions play a "crucial role" in establishing state rules "in conjunction" with the FCC's *Advanced Services Order* to "ensure collocation is available in a timely manner and on reasonable terms and conditions." Thus, it is imperative that this Department take action to enforce the FCC's regulations and to establish state-specific collocation regulations. This will ensure that the terms and conditions under which BA-MA offers collocation do not discourage competitive entry into this market, and to establish an environment in which competition thrives and consumers benefit. This Department is provided here with an opportunity to establish the appropriate regulatory

framework to encourage investment in Massachusetts' advanced services market. The importance of this proceeding cannot be undervalued.

In order to bring advanced services to Massachusetts, CLECs need BA-MA to provide (1) all flavors of collocation as required by the FCC, (2) xDSL capable loops, and (3) high-capacity levels of transport; all on nondiscriminatory rates, terms, and conditions. Unfortunately, although Bell Atlantic provides CLECs the necessary elements to provide advanced services in other neighboring markets such as Pennsylvania and New York, BA-MA's offering in Massachusetts through Tariff No. 17 is wholly inadequate. First and foremost, the proposed Tariff fails to specify the prices and rate elements that BA-MA will charge CLECs for collocation, leaving most items to be determined on an Individual Case Basis ("ICB"). To the extent that one can determine given the limited cost information that BA-MA has provided, BA-MA's proposed prices for collocation do not appear to reflect Total Element Long Run Incremental Cost ("TELRIC").

Additionally, the terms and conditions for collocation are unreasonable and violate the FCC's *Advanced Services Order* and *UNE Remand Order*. More precisely, BA-MA requires CLECs physically collocating in BA-MA's central offices to connect with BA-MA's own equipment via a SPOT frame, in direct contravention to the FCC's finding that ILECs may not require that CLECs make use of an intermediate interconnection arrangement where direct connection is technically feasible. Also, BA-MA's proposed security requirements are not only excessive, but impose requirements that the FCC clearly denied in its *Advanced Services Order*—such as requiring CLEC personnel to be accompanied by an escort. Further, BA-MA's cageless collocation offering is replete with unreasonable restrictions and obligations on CLECs. While the terms and conditions under which Bell Atlantic is providing collocation in New York and Pennsylvania promotes active competition and opens up the advanced services market, BA-MA flatly refuses to incorporate any of the terms and conditions it offers in New York and Pennsylvania to benefit Massachusetts consumers. This Department must not permit BA-MA to deter advanced services competition from developing in the Commonwealth while its neighbors are being afforded the opportunity of full and dynamic provision of advanced services.

The Tariff is also defective in that it contains discriminatory provisions regarding reservation of space—unfairly favoring BA-MA's space reservation requirements over those of its competitors—and CLEC use and access to cable racking. Further, it fails to provide reasonable installation intervals, or indeed *any* such intervals, giving BA-MA unwarranted discretion over this competitively critical factor. BA-MA should include specific intervals, and should allow for seamless conversions of virtual to cageless collocation as well.

The Tariff also fails to allow for the development of advances services competition in Massachusetts because it contains no provision for xDSL capable loops, thereby leaving data CLECs such as Rhythms and Covad with substantial uncertainty about the prices, terms and conditions that BA-MA will seek to impose upon them. BA-MA's Tariff also fails to provide CLECs both sufficient information on the locations of available transport

capacity, and provision intervals for its OC-3 and OC-12 transport—information critical to CLECs in plan network rollout for the provision of advanced services. Finally, uncertainty related to the interaction of inconsistent Tariff and contract provisions can undermine the promotion of competition in Massachusetts.

The Department must address the failings of BA-MA's Tariff 17 to prevent BA-MA from imposing excessive prices or unreasonable terms and conditions on CLECs and to assure BA-MA's tariffed offerings for collocation, xDSL capable loops, and transport are offered on rates, terms and conditions which meet the requirements of the FCC orders and provides Massachusetts consumers the same benefits Bell Atlantic offers consumers in its neighbor states.

DISCUSSION

I. The Department Should Reject BA-MA's Proposed Collocation Rates and Adopt Forward-Looking Cost-Based Collocation Prices

In the *First Advanced Services Order*, the FCC ordered incumbent LECs to provision cageless collocation to requesting competitors in order to end incumbent LEC price discrimination. Prior to the requirement to provide cageless collocation, incumbents were inflating collocation charges to incredible levels in an effort to bar competitive entry. The FCC brought a legal end to that practice by requiring cageless collocation, but left to the states the actual implementation of its cageless requirements.

Pursuant to FCC rules, incumbent LECs are required to set prices for collocation using the same TELRIC methodologies used for pricing of unbundled network elements (UNE). Thus, the Department must ensure that BA-MA sets its collocation prices based on forward-looking economic costs. By insuring that BA-MA provides a clear and detailed justification for the collocation costs it imposes on competitors, the Department will prevent BA-MA from exercising its monopoly power to erect barriers to entry. As a retail competitor of both Rhythms and Covad, BA-MA has the incentive and the ability to delay, or even bar, competition in Massachusetts by pricing collocation so high as to price competitors "out of the market."

A. BA-MA fails to denote specific charges for cageless collocation, thus violating FCC and Department rules requiring tariffed collocation terms and conditions.

BA-MA has done in its tariff exactly what the FCC and the Department, by enacting concrete collocation rules and pricing principles, sought to avoid – uncertainty for competitive LECs, and discriminatory power reserved by BA-MA. In its tariff, which purports to reflect all of its collocation-related obligations under the law, BA-MA has left rates and rate elements for cageless collocation almost entirely to "ICB", or individual case basis. As a result, it's as if BA-MA didn't file a tariff at all – and as if the cageless collocation requirement didn't exist at all. ICB tariffs are meaningless, because they

permit BA-MA to set discriminatory and excessive rates after its tariff has been approved – and after the watchful eye of the regulator has turned away.

Part M, section 5, page 19 of BA-MA's August 27, 1999, tariff revision does not contain *even a single concrete price* for cageless collocation site preparation, conditioning, and provisioning. This is especially evident in BA-MA's CCOE offering. Instead of providing rates, BA-MA designates every rate element associated with CCOE as either "See Note" or "TBD". Why? Because BA-MA wants to maintain its ability to impose the inherent "expense and provisioning delays inherent in the caged collocation process" that the FCC sought to prevent with cageless collocation rules. Not only has BA-MA ensured that it retains the ability to impose whatever charge it wants for collocation, it has denied the Department the power to examine BA-MA's collocation charges to ensure they comply with Department and FCC rules.

The Department's review of BA-MA's collocation tariff is intended to ensure that the tariff provides competitive LECs with the fairly priced and properly provisioned collocation space required by law. BA-MA has attempted to thwart this important examination by refusing to provide any pricing terms whatsoever. BA-MA should not be permitted to succeed in this gambit. Rather than allowing BA-MA to escape price scrutiny, the Department should order BA-MA to immediately include TELRIC-based, concrete pricing terms in its tariff, to justify those prices, and to begin offering competitors guaranteed access to reasonably priced collocation space every time it is ordered, not only in those "cases" that BA-MA chooses.

BA-MA has done more than simply refuse to establish concrete prices for its cageless collocation arrangements. In its tariff, BA-MA appears to pull certain cageless collocation-related pricing terms from other parts of its tariff and even, in some cases, reserves the right to impose additional charges if it later decides to do so. Thus, for example, the cageless collocation tariff states that: "Rates and charges as specified for collocation arrangements described in Sections 2 and 3 apply in addition to the rates and charges specified herein." As a result, BA-MA charges over a thousand dollars for a "site survey" for cageless collocation space or for caged space. Why are the charges exactly the same? Surely for the conditioning of space and construction of a cage, the charges for site planning and surveying would be higher than for cageless collocation, which requires only empty space on the floor.

The FCC has held that ICB collocation prices "violate the Commission's requirement that [collocation] rates be uniform for all interconnectors and that the LECs' tariff identify the actual rates" for collocation. The FCC's conclusion is particularly applicable here, where BA-MA's tariff permits it "to recover unspecified charges for additional, extraordinary, or individually determined costs, [so as to] deny interconnectors advanced notice of all the costs associated with physical collocation, creating an uncertainty for the interconnector." This uncertainty serves as a barrier to entry, because it interferes "with the interconnector's ability to implement its business plans and to market its services." The Department should order BA-MA to replace each and every ICB rate in its

collocation tariff with a concrete, specific, and forward-looking charge, in order to ensure that competitors face only predictable and fair collocation charges.

B. Those prices that BA-MA does set in its tariff are not TELRIC-based.

Even those charges that BA-MA does denote for cageless collocation are based on inappropriate and discriminatory assumptions. Most blatant is the use of a fifteen square foot bay for cageless collocation, while BA-MA uses a seven foot bay for virtual collocation. The Department should require BA-MA to use the same seven foot bay for cageless as it does for virtual, and to recalculate its charges accordingly. BA-MA already relies on virtual arrangements to derive its engineering and implementation costs, thus explicitly recognizing the similarities between cageless and virtual. BA-MA is thus not at all justified in doubling the space assumption, and thus doubling the cost, of cageless collocation over virtual.

BA-MA is also discriminating against competitors in the labor charges it imposes for site surveys. As Terry Murray describes in her direct testimony, BA-MA has attempted to justify charging competitors for six hours of labor each and every time BA-MA must "site survey" a central office to see if collocation space is available. Thus, if Rhythms and Covad each apply for cageless collocation space in the same central office, each will be charged over $400 for six hours of site surveying – which essentially involves BA-MA looking in a central office to see if there is sufficient floor space. This is a violation of TELRIC for two reasons. First, it would be efficient (and a typical incumbent LEC practice) for BA-MA to maintain records as to the space available in its central offices – both for its own use and for competitors. Thus BA-MA cannot charge competitors for a new six hour "site survey" with each new collocation application. Second, it is impossible to believe that BA-MA must spend six hours re-surveying its central office each time a new application is received. BA-MA's rates fail to take into account the simple fact that functions of planning and design and procurement are subject to economies of scale. Although the site survey is but one example of a planning function, it is clear that the methodology employed by BA-MA produces inflated and unjustified costs.

In addition, BA-MA has left itself the opportunity to impose "special construction" charges on collocating carriers. While seemingly innocuous, this provision allows BA-MA to "double charge" competitive LECs for collocation space. BA-MA's TELRIC cost study purports to take account of the forward-looking costs of renting space in BA-MA central offices. That charge must include the cost of preparing that space for collocation. If BA-MA is permitted to charge both the TELRIC collocation rate, which allows them to recover fully for all costs incurred in leasing collocation space, and then a "special construction" charge on top of that for space preparation, BA-MA is recovering twice for preparing space. The Department should order BA-MA to remove the "special construction" double recovery provisions from its tariff.

C. BA-MA's proposed cageless collocation security charges are unreasonable and are not based on TELRIC methodology.

BA-MA seeks to charge each and every cageless collocation customer over $73,000 for security arrangements in each and every central office. BA-MA has provided inadequate justification for these excessive charges, and is attempting to erect yet another serious cost barrier to competitive entry. As detailed in the surrebuttal testimony of Terry Murray, BA-MA has provided no documentation to justify its purported costs and no detail that would permit competitors or the Department to examine in depth the costs BA-MA is attempting to recover.

First, BA-MA purports to analyze the security needs of 34 central offices – only 7 of which are in Massachusetts. BA-MA's reliance on actual office data – rather than projected collocation demand and security needs -- is inconsistent with a forward-looking cost methodology. Failure to use a forward-looking cost methodology is sufficient, on its face, to reject BA-MA's reported CCOE security costs.

It is impossible to tell what assumptions about "necessary" security BA-MA made for each central office, nor is there adequate supporting documentation to back up BA's "cost" estimates. For example, BA-MA's workpapers provide no evidence or analysis concerning how the CCOE-related security costs and arrangements are the same as those required for its own employees or contractors. Further, BA-MA provided little information concerning the basic criteria it used to determine what it considered "reasonable" in each office. Finally, BA-MA failed to provide the basis for its assumed unit costs. Rhythms and Covad submit that the Department should require that BA-MA provide a greater level of documentation to support its costs, especially given BA-MA's track record of failing to provide adequate support for its purported "costs" of collocation in the past. This is particularly important given the FCC's rule that incumbent LECs may only impose such security measures "that are as stringent as the security arrangements that incumbent LECs maintain at their own premises either for their own employees or for authorized contractors." Nowhere in its cost documentation does BA-MA provide any indication that it is in compliance with that rule. As such, the Department has no way of ensuring that BA-MA is imposing on competitors only the limited security measures it imposes on itself, rather than using "security concerns" as a means of loading additional costs on competitors.

Second, BA-MA intends to use every possible security measure at its disposal in every single central office, despite the FCC's specific rule limiting the number and scope of security measures BA-MA can adopt. Specifically, the FCC held that, rather than vast and wide ranging security costs incumbents were attempting to impose on competitors, incumbents are only permitted to "install, for example, security cameras or other monitoring systems, or to require competitive LEC personnel to use badges with computerized tracking systems." BA-MA has interpreted this holding as permitting it to utilize every single security measure on that list. To the contrary, the clear intent of the FCC was to prevent incumbent LECs from imposing "discriminatory security requirements that result in increased collocation costs without the concomitant benefit of

providing necessary protection of the incumbent LEC's equipment." BA-MA is permitted to require cameras, *or* other monitoring systems, *or* computerized badges. It is not permitted to artificially drive up collocation costs by requiring all three, as it has in its tariff.

Third, BA-MA has used "embedded costs" in setting its security charges, in direct violation of Department rules. In order to determine its security costs, BA-MA surveyed nearly three dozen central offices, averaged the costs of security in those offices, and developed its security charges from that survey. The survey is by definition an embedded cost survey, as it examines existing plant and existing arrangements, rather than forward looking cost methodology. Perhaps more importantly, BA-MA is trying to relive the pre-cageless collocation days by requiring competitive LECs to pay for the construction of wire mesh partitions and wire mesh doors, the very types of artificially-inflated security charges the FCC sought to prevent in the *Advanced Services Order*. In addition, BA-MA has grossly inflated the cost estimates by basing them only on collocation space already ordered by competitive LECs. If BA-MA examined future collocation demand, as it is required to do by TELRIC, it would utilize many more collocators and much more square footage in the denominator of its calculations, thus greatly reducing the per-competitor share of any security costs.

Because BA-MA is limited by FCC rule to imposing only those security requirements on competitors that it already imposes on itself, the Department should inquire as to the measures that BA-MA already has in place. As those measures are already installed and paid for, it is inappropriate for BA-MA to seek to impose duplicative costs on competitors when adequate security measures are already in place. Should any additional measures be required, which should be a rare occurrence, the Department should ensure that BA-MA shares the cost of those measures, in order to account for the benefit BA-MA garners from increased security in its own central offices. Because increased security will also help deter and help BA-MA detect and isolate security-related problems that might originate with its own employees, it should share "reasonable" security costs on a pro rata basis. As its tariff now stands, competitive LECs are responsible for 100% of security upgrades – BA-MA gets most of the benefits with none of the costs.

As proposed, BA-MA allocates these costs solely to CCOE collocators on the basis of an estimate of total square feet of CCOE alone. An allocation which is made solely to CCOE collocators fails to reflect that any portion of the benefit of the additional security would accrue to BA-MA's own operation. The Commission should assure that costs are shared as well as benefits. Thus, there should be a pro rata sharing of costs based on use of total floor space.

D. BA-MA uses improperly low fill factors and unrealistic or unsupported inputs and assumptions in support of its cost study, resulting in discriminatory and anticompetitive collocation charges.

BA-MA applies a low fill factor to its construction cost per bay – it assumes that only 50% of its collocation space will be utilized by competitors, or "filled." The effect of the 50% fill rate is dramatic: "a fill factor of 50 percent would in effect double the cost relative to the cost of the actual in-use space." Thus, for example, if BA-MA has 200 square feet of collocation space built out, but it applied its 50% fill factor (which assumes that only 50% of that built-out space will actually be occupied by competitors), a competitor "will be paying for 2 square feet of space for every 1 square foot that it is actually using." BA-MA has provided no justification for using such an artificially low fill factor in its cost calculation. For example, the AT&T/MCI collocation cost model uses fill factors that are dramatically higher – closer to 75% -- and thus more accurately reflect the actual central office space usage of competitors. The Department should order BA-MA to utilize a fill factor that more accurately reflects those adopted by other states. The 50 percent rate is an artificial means of inflating competitors' costs and should not be permitted to stand.

BA-MA has utilized other unsupported and unrealistic inputs and assumptions in its cost model. For example, BA-MA assumes that it will take 25 hours to install any type of equipment or capacity in a virtual collocation arrangement. BA-MA provides no justification for this assumption, which is especially troubling given BA-MA's failure to differentiate between different types of equipment and capacity installation. Clearly, not every type of engineering work takes 25 hours to complete; some projects are significantly shorter. Yet BA-MA is attempting to gouge collocators by charging them a minimum of 25 hours of engineering work for any installation whatsoever.

Finally, BA-MA assumes that the fixed costs of a 300 square foot and 25 square foot physical collocation cage are identical. As a result, BA attempts to recover the same "costs" for a small, 25 square foot space as it would if a competitor ordered space 12 times a big. It simply cannot be the case that BA-MA should be permitted to charge the same for 300 foot and 25 foot collocation arrangements. The Department should order BA-MA to revise its tariffed rates to reflect the significant cost savings inherent in ordering collocation space 12 times smaller than the space costs BA-MA has used to justify its charges.

II. BA-MA's Proposed Terms and Conditions For Collocation are Unreasonable and Should be Revised to Comply with the FCC's *Advanced Services Order*

The Act and the FCC's *Advanced Services Order* provide clear collocation obligations on all ILECs, including BA-MA. While BA-MA asserts that its proposed Tariff No. 17 satisfies these obligations, the Tariff falls woefully short. Tariff No. 17 violates both the specific provisions of the *Advanced Services Order*, as well as the fundamental purpose of the Order by unfairly discriminating against CLECs. Specifically, Tariff No. 17 includes restrictions on the demarcation point between ILEC and CLEC equipment, on CLEC access to collocated equipment and on the placement of equipment in a cageless

collocation environment that directly conflict with the *Advanced Service Order's* provisions. BA-MA's proposed tariff further violates the spirit of the *Advanced Services Order* by providing itself more favorable terms and conditions on the reservation and reclamation of collocation space as well as access to cable racking. Finally, BA-MA's proposed tariff omits several collocation terms and conditions that the FCC has required ILECs to offer. For these reasons, Rhythms and Covad urge the Department to revise Tariff No. 17 to ensure that Massachusetts' consumers enjoy the competitive benefits inherent in the FCC's collocation rules and regulation.

A. **Bell Atlantic Massachusetts' Proposed Tariff No. 17 Includes Unreasonable Terms and Conditions that Violate Specific Requirements of the *Advanced Services Order***

1. BA-MA's Requirement That All Forms Of Physical Collocation Require SPOT Bays Violates The FCC Order

The FCC's *Advanced Services Order* prohibits BA-MA from forcing competitors "to use an intermediate interconnection arrangement in lieu of a direct connection to the incumbent's network if technically feasible." As the FCC explains, "such intermediate points of interconnection simply increase collocation costs without a concomitant benefit to incumbents." Notwithstanding this directive, BA-MA's proposed tariff includes a requirement that CLECs connect their collocated equipment to a Shared Point of Termination ("SPOT") bay. The SPOT bay is an intermediate interconnection point that sits between a collocator's equipment and the Main Distribution Frame ("MDF"), and in fact serves the same functions as the MDF. Thus, requiring CLECs to use the SPOT bay clearly contravenes the FCC directive that ILECs "*may not require* competitors" to use a SPOT bay where direct connection is technically feasible.

BA-MA tries to side step its obligation by arguing that it is justified in imposing this requirement on competitors since the FCC previously stated a SPOT bay could be an effective demarcation point. What BA-MA fails to recognize, however, is that the decision in which the FCC made that finding was in the *Second Report and Order* in FCC Docket 93-162 issued June 9, 1997—almost two years *before* the *Advanced Services Order*. The FCC's *Second Report and Order* must be read in conjunction with the clarifications made in the *Advanced Services Order* which prohibit the requirement of such an intermediate connection. More importantly however, while the SPOT bay may be an effective *optional* physical demarcation point, the FCC's most recent directives prohibit BA-MA from requiring use of a SPOT bay for all collocators. Therefore, the Department should order BA-MA to revise its Tariff to eliminate the SPOT bay requirement and, at most, make this interconnection point optional for CLECs.

2. BA-MA's Proposed Security Requirements Violate The FCC's *Advanced Services Order*

The *Advanced Services Order* allows BA-MA to require only reasonable security measures to protect its network. Though the *Advanced Services Order* identifies several alternative security measures ILECs could impose (including security cameras), it makes clear that no security measures may be imposed if they are more restrictive than those the ILEC uses for its own personnel or third-party contractors working for the ILEC. BA-MA may not impose security requirements "that result in increased collocation costs without the concomitant benefit of providing necessary protection of the incumbent LEC's equipment."

Specifically, BA-MA may not "unreasonably restrict the access of a new entrant to the new entrant's equipment." Moreover, the *Advanced Services Order* requires BA-MA to allow CLECs to access their equipment 24 hours a day, seven days a week, "without requiring either a *security escort* of any kind or *delaying a competitor's employees' entry* into the incumbent LEC's premises by requiring, for example an incumbent LEC employee to be present."

In its proposed Tariff No. 17, BA-MA applies an overly broad definition of "reasonable" security measures to include restrictive escort and notice requirements that severely limit CLEC access to their collocated equipment. These security measures are in direct violation of the *Advanced Services Order*. Notwithstanding the FCC's clear language, Tariff No. 17 requires CLECs to provide BA-MA with advanced notice ranging from thirty to sixty minutes, depending on whether the central office is manned, before dispatching a CLEC representative to the collocation arrangement. BA-MA's proposed notice requirement stands in stark contrast to the FCC's prohibition against BA-MA "delaying a competitor's employees entry." Clearly, requiring CLECs to provide advanced notice before entering the central office will cause delay.

In addition, BA-MA proposes to impose an escort requirement on CLECs. According to Part E, Section 2.2.5.L, of the Tariff, in "those central offices where other security measures are not yet in place, [BA-MA] will, *at its discretion, require an escort*." (*emphasis added*). BA-MA's qualification, that its escort requirement only applies where no other security measures are yet in place, is irrelevant. The *Advanced Services Order* is clear. BA-MA may not require security escorts to accompany CLECs accessing CLEC collocated equipment. Nowhere in that directive does the FCC provide an exception of this rule for the contingency that other security measures are not yet in place.

As the FCC recognized, full and unfettered access is necessary to ensure that CLECs can provide consumers with a competitive level of service. "If competitors do not have such access, they will be unable to service and maintain equipment or respond to customer outages in a timely manner." BA-MA's proposed notice and escort requirements are anticompetitive since they cause delay to CLECs in coordinating site visits, whereas BA-MA's personnel can access its site without requiring any such coordination. Rhythms provides its customers stringent service level guarantees, assuring customers that its network will be up and running at least 99% of the time. This level of assurance is predicated on and can only be assured where Rhythms has immediate access for repairs. Therefore, the Department should order BA-MA to eliminate the notice and escort security requirements from its proposed Tariff No. 17.

3. The Terms and Conditions of BA-MA's CCOE Offering are Inadequate and Violate the *Advanced Services Order*

The FCC recognized that ILECs "have the incentive and capability to impede competition by reducing the amount of space available for collocation by competitors." The FCC's requirement that ILECs provide a variety of collocation arrangements, including cageless collocation, is designed to counterbalance these incentives. By requiring BA-MA to offer alternative collocation arrangements, the FCC sought to "optimize the space available at incumbent LEC premises." Indeed, the FCC requires BA-MA to allow CLECs to collocate in "any unused space . . . and may not require competitors to collocate in a room or isolated space separate from the incumbent's own equipment." In addition, BA-MA may not impose "unreasonable segregation requirements to impose unnecessary additional costs on competitors." Thus, the FCC's rules are designed to maximize the amount of collocation space available.

Notwithstanding the *Advanced Service Order's* provisions, BA-MA's proposed cageless collocation offering, Cageless Collocation Open Environment ("CCOE"), includes provisions that unnecessarily and substantially reduce the amount of space available for collocation. BA-MA requires a minimum 10-foot space between BA-MA's equipment and any CLEC equipment and requires collocation in "in a separate line-up…[that] will not share the same equipment bays with the Telephone Company equipment." Imposing this 10-foot "demilitarized zone" will result in premature exhaust of space and is also in direct violation of the *Advanced Services Order's* prohibition against requiring collocation in a separate room or isolated space.

Therefore, the Department should require BA-MA to eliminate the 10-foot buffer zone provision from its Tariff No. 17 and allow CLECs to intermingle their equipment with BA-MA's equipment. By taking such

action, the Department would maximize collocation space in central offices and thus further the goal of "foster[ing] deployment of advanced services." As Mr. Moscaritolo explained, adopting a truly cageless collocation environment without buffers and segregated racks would eliminate "much of the work now required by BA…[and therefore] costs would be reduced dramatically, and the 'no-space' problem would be nearly eliminated altogether."

B. **BA-MA's Tariff Offering Unreasonably and Anti-Competitively Offers BA-MA Preferential Treatment Over CLECs in Contravention of the Fundamental Principle Underlying the FCC's *Advanced Services Order***

1. BA-MA's Space Reservation Policy Unfairly Favors BA-MA's Space Requirements Over Those of Its Competitors

Under the FCC's rules, BA-MA may "retain a limited amount of floor space for its future uses, provided, however, that the incumbent LEC may not reserve space for future use on terms more favorable than those that apply to other telecommunications carriers seeking to reserve collocation space for their own future use." In other words, the ILEC cannot reserve collocation space on terms and conditions that are more favorable than those that it imposes on CLECs seeking to reserve space. When read in conjunction with the *Advanced Services Order's* goal of maximizing the availability of collocation space, the ILECs have a heavy burden of proof to support their space reservation policies, particularly in cases such as this where BA-MA applies one policy for itself and another policy for CLECs.

Notwithstanding the FCC's rules, BA-MA's space reservation policy unfairly favors BA-MA's space requirements over those of its competitors. According to Tariff No. 17, if "space is available [BA-MA] will reserve the space for the CLEC until such time as [BA-MA] requires the reserved space." Thus, CLECs may only reserve space that BA-MA does not now, and will not in the future, consider necessary for its own operations. Even if a CLEC is successful in convincing BA-MA to reserve space on it behalf, BA-MA, under the terms of the proposed Tariff, may unilaterally determine that it needs the space and take the space away from the CLEC. With these terms, the Tariff provides no absolute certainty or security for CLEC reserved space.

In stark contrast to its reservation policy for CLECs, BA-MA grants itself the right to reserve space for up to a three to five-year period. This so-called policy is merely a "planning horizon." Thus, BA-MA has full discretionary authority to lock CLECs out of a particular central office for as long as it chooses, merely by claiming its right to reserve space; and may even deny cageless collocation where it simply asserts it has reserved

the space. As so aptly stated by MCIWorldcom witness Roy Lathrop, "nothing exists to prevent BA-MA from using space reservation as a stalling tactic to deny collocation by asserting it has reserved the space." These provisions are clearly inconsistent with the FCC's rule that BA-MA only reserve a "limited amount of floor space" and do so under terms and conditions that are at least as favorable as those it applies to CLECs.

Nevertheless, BA-MA argues that separate reservation policies are necessary because BA-MA has local service obligations that CLECs do not have. And, BA-MA has unilaterally determined that its needs prevail over those of the CLECs. BA-MA's argument is nothing more than smoke and mirrors. For instance, BA-MA claims that it must reserve space for its switching equipment to provide basic local exchange service. Yet, local switching is not limited to basic local exchange service since it includes capacity for vertical features as well. In addition, it is by no means clear from the Tariff to what extent space may be reserved for long-distance-related functions or advanced services-related functions.

Moreover, five years is more than sufficient for BA-MA to plan and build new or add supplemental facilities to meet its projected demand. While BA-MA claims that if it runs out of space, it has "nowhere else to go," BA-MA has substantial resources at its disposal to build additional facilities to meet its demand. BA-MA controls the land and the building, and has right of way easements accessing the building. Thus, BA-MA can add new floors or additional space to buildings more easily than CLECs. Thus, although it may be "reasonable" to allow for some space reservation to provide for continuing basic local exchange service, BA-MA's proposed reservation policy for CLECs vis-a-vis itself improperly exploits its role as the monopoly incumbent local exchange provider.

BA-MA's space reclamation policy is also discriminatory. Section 2.2.8 of the Tariff allows BA-MA, "upon 6 months or shorter notice," to reclaim space in order to fulfill its obligations under state and federal laws to provide services to its customers. The use of a specific time frame when coupled with the vague "or shorter" qualification renders the stated time frame meaningless. Further, BA-MA does not have similar space efficiency requirements that CLECs can unilaterally impose upon it. Before BA-MA is allowed to limit collocators' options by reducing the amount of space available for competitive carriers, it must first be obligated to remove any obsolete or unused equipment and convert any administrative space in the central office to collocation space. In addition, BA-MA should be required to consolidate functions scattered throughout the central office to maximize space and allow as many competitors to collocate as possible. This would encourage competition and diminish the possible unwarranted delay in provisioning collocation space.

2. BA-MA Unfairly Discriminates Against Its Competitors in Refusing to Permit CLECs Access to Cable Racking

There can be no dispute that ILECs have a fundamental obligation to provide CLECs with collocation on nondiscriminatory terms and conditions. Indeed, the FCC's rules and regulations adopted in the *Advanced Services Order* underscore this point. To this end, the Department should guard against any proposed Tariff provisions that BA-MA could manipulate to garner an unfair competitive advantage.

One such example is the vague and unclear provision in the Tariff describing CLEC access to cable racking for CLEC to CLEC connections. This provision fails to provide any certainty on whether BA-MA will allow such connections. As Mr. Lathrop explained, the Tariff is unclear as to whether CLECs can install their own racking, or if they are prohibited from doing so. Though the Tariff includes a placeholder for cable racking in the pricing schedule, it does not refer to its availability anywhere else in the Tariff. Thus, a CLEC cannot know by reading the Tariff whether or not cable racking is, in fact, available. Moreover, the cable racking element in the price schedule does not identify a price but rather adopts this ICB pricing. **S**uch ICB pricing is completely ineffective. It is impossible for CLECs to accurately and effectively develop business plans without concrete prices upon which to make their analysis and business decisions.

Another interpretation of these provisions may be that the Tariff prohibits CLECs from using BA-MA's cable racking for CLEC to CLEC connection but would allow CLECs to build *their own* cable racking in the central office for this purpose. However, this simply does not make sense given that the intent of the *Advanced Services Order* is to provide for efficient collocation. Racking is basically just "ladders hung up where the cables are piled on top." "Collocators already use cable racking throughout the central office for the power and the fiber and the connectivity." Thus, requiring CLECs to build their own cable racking would be duplicative, costly, and discriminatory and may not even be possible in every case.

BA-MA has not provided any justification for not permitting CLECs to use BA-MA's cable racking. In fact, in New York, Bell Atlantic has agreed to allow CLECs to connect to other CLECs in a contiguous area of a central office by installing their own cabling on either their own dedicated or BA-NY's racking, proving that it is feasible and reasonable. BA-MA, however, refuses to import terms and conditions Bell Atlantic has implemented in other jurisdictions to Massachusetts, merely claiming without substantiation that "there are a variety of reasons that may cause differences between states." Since BA-MA baldly refuses to incorporate the best practices Bell Atlantic meets in other jurisdictions for

Massachusetts, this Department must require that BA-MA provides Massachusetts consumers and competitors with the same benefits Bell Atlantic is making available in other jurisdictions. Thus, Rhythms urges this Department require BA-MA to allow CLECs to use available cable racking when connecting collocation arrangements to other CLECs.

C. BA-MA's Proposed Tariff No. 17 Omits Critical Provisions

1. The Department Should Require BA-MA to Tariff Specific Provisioning Intervals

Collocation delivery intervals are a significant obstacle to carriers eager to provide advanced services to consumers. The FCC "emphasiz[ed] the importance of timely provisioning," recognizing the potential for "competitive harm that new entrants suffer when collocation arrangements are unnecessarily delayed." Delaying collocators' ability to collocate in the central office affects competitors' ability to adequately compete in the market because slower provisioning times results in less competitive services. Since BA-MA is the sole provider of critical central office space, it can use its control to its unfair advantage by forcing competitors to wait for space, while it continues to provide services to end-users. Therefore, the FCC exhorted state commissions to "ensure that collocation space is available in a timely and pro-competitive manner that gives new entrants a full and fair opportunity to compete."

Department action to ensure timely intervals is particularly necessary in Massachusetts because BA-MA has refused to tariff any specific collocation provisioning intervals. Rather than committing to specific time intervals, BA-MA intends to rely on provisioning intervals contained in its non-tariffed "guidelines." Currently, according to these guidelines, BA-MA will provide traditional physical collocation in 90 days and cageless in 105 days. When coupled with BA-MA's proposed 14-business day interval for notification of availability, BA-MA intends to impose a five-month interval for caged collocation and six-month interval for cageless collocation. These intervals are not only excessive, they are unreliable and unenforceable since BA-MA has refused to include them in the Tariff.

BA-MA's proposal to use untariffed guidelines provides no protection for competitors and consumers because the guidelines are unenforceable. The Department has the authority and obligation to review BA-MA's tariffs. Yet, BA-MA is attempting to shield crucial collocation provisioning intervals from Department review by refusing to include intervals in its Tariff and instead referring to non-regulated guidelines. As Ms. Murray explained, "by avoiding tariffed commitment to specific installation intervals, BA-MA maintains an ability to establish private, unreasonable, intervals and generally lessens the value of its collocation services to competitors." Without specific timelines CLECs will have difficulty proceeding with deployment plans. In fact, BA-MA acknowledges that these intervals do change over time. Thus, BA-MA's non-tariffed provisioning intervals provide no assurance to CLECs, or the Massachusetts consumers they serve, that the intervals will remain consistent. Therefore, the Department should require BA-MA to

revise its tariff to incorporate specific collocation provisioning intervals, as detailed below.

2. The Department Should Require BA-MA to Adopt Efficient Collocation Intervals

The *Advanced Services Order* has left provisioning intervals to be determined at the state level. The FCC recognized that provisioning intervals should be short, and used the experience of other ILECs as a guiding post for the establishment of shorter intervals. Against this backdrop, BA-MA's proposed non-tariffed guideline intervals are clearly excessive. This is especially true in light of the fact that, since the *Advanced Services Order* eliminates the need for construction of a collocation cage, logic dictates that provisioning intervals should *decrease*. BA-MA's guideline intervals do not recognize the decreased work effort the FCC anticipated in ordering CCOE arrangements.

The Department should adopt the following specific, shorter intervals in this docket for the provisioning of collocation: A 60-calendar day provisioning interval from the date of receipt of the request for Physical Collocation; and no more than a 30-calendar day interval from the date of receipt of the request for CCOE. Preparing a central office for physical collocation is not a difficult task. In general terms, it merely requires BA-MA to put up fencing and making the space available for CLECs to bring in and install their equipment. CCOE requires much less time since there is substantially less work involved. Provisioning the central office for cageless collocation essentially comprises "putting equipment in an equipment bay that's already there, in some vacant space." Likewise, adjacent collocation should require only a 30-day provisioning interval since all that is required from BA-MA is the provisioning of a transport facility between BA-MA and the adjacent site where the CLEC is collocating. Adopting collocation provisioning intervals such as these will ensure BA-MA complies with the FCC's directives and also offers collocation on terms that are consistent with the obligations Bell Atlantic and other ILECs must currently meet in other sates.

As noted by Ms. Murray in her surrebuttal testimony, other state commissions in the Bell Atlantic territory, such as the New York Public Service Commission and the Pennsylvania Public Utility Commission have established shorter provisioning intervals for collocation. Specifically, the New York Commission recently concluded that BA should reduce its proposed installation intervals for CCOE to 76 business days. Similarly, the Pennsylvania Commission recently adopted a compromise 90-calendar day interval in its "Global Settlement" proceeding, with a follow-up investigation to determine whether that interval should be shortened.There is no reason why, at a minimum, BA-MA should not be required to tariff these provisioning intervals.

Massachusetts' consumers are just as deserving of shorter collocation intervals as consumers in these other states. BA-MA has not provided any justifiable reason why it cannot provide collocation on shorter time intervals. It is simply not willing to make the necessary commitment to opening up the local exchange market to competition in Massachusetts. If BA-MA were amenable to importing the favorable terms and

conditions that Bell Atlantic has been obligated to implement in other jurisdictions, CLECs would be provided at least a modicum of protection. However, during the hearings, BA-MA's witness was specifically asked whether BA-MA would be willing to reflect favorable terms and conditions from other Bell Atlantic jurisdictions, such as New York, and flatly refused. BA-MA's unwillingness to accept such a condition further indicates it is unwilling to use best efforts to provision collocation—even when compared to its own affiliate companies. The Department should, therefore, order BA-MA to incorporate provisioning intervals into its tariff. In addition, the Department should require BA-MA to tariff Rhythms' proposed 60 day interval for physical collocation and 30 day interval for CCOE, or at a minimum, intervals at least as short as those that Bell Atlantic provides in its other states.

3. The Department Should Order BA-MA to Broaden the Types of Collocation Alternatives That it Makes Available to Facilitate and Maximize the Full Deployment of Advanced Services Deployment

The Department should order BA-MA to broaden the types of collocation alternatives that it makes available to facilitate and maximize the full deployment of advanced services. As the FCC made clear, the regulations promulgated in the *Advanced Services Order* establish the *minimum* standards for collocation. While the FCC chose to require ILECs to make adjacent collocation available only when no collocation space exists in the central office, the Department and other state commissions have the authority and should "respond to specific issues by imposing additional requirements." Thus, states are encouraged to enact "rules of their own that, in conjunction with federal rules, ensure that collocation is available in a timely manner and on reasonable terms and conditions." To this end, Rhythms and Covad urge the Department to require BA-MA to make adjacent collocation, both on-site and off-site, available at the CLEC's option, regardless of whether space is exhausted in a particular central office. Currently, BA-MA refuses to make adjacent collocation available, claiming that adjacent collocation is not necessary because sufficient space exists in its central offices.

BA-MA's position fails to recognize that there are significant benefits to adjacent collocation that justify establishing this requirement. This type of collocation provides a significant advantage because it requires absolutely no use of central office space by the CLEC. In addition, adjacent collocation solves any security concerns because the CLEC's equipment is completely segregated. Adjacent collocation requires only that the incumbents provision a trunk from its central office to the CLEC's site. By requiring adjacent collocation as an additional collocation option available to CLECs at all times, adjacent collocation could relieve demand for central office collocation space. Given the evident practicality of adjacent collocation arrangements, and the fact that they actually impose a lesser burden upon ILECs than traditional collocation, the Department should require BA-MA to provide adjacent collocation in all technically feasible situations.

Moreover, other ILECs currently offer on-site adjacent collocation, and, in fact Rhythms has adjacent collocations in California with Pacific Bell and in GTE service territories in California and North Carolina. According to the FCC, "deployment by any incumbent LEC of a collocation arrangement gives rise to a rebuttable presumption in favor of a competitive LEC seeking collocation in any incumbent LEC premise that such an arrangement is technically feasible." Thus, there is a rebuttable presumption that adjacent collocation is technically feasible.

Nevertheless, despite the fact that its merger partner offers it, BA-MA refuses to offer adjacent collocation. BA-MA does not provide any technological justification for this position, rather it appears to have unilaterally decided that such collocation is not necessary. The choice, however, is not BA-MA's to make.

Because adjacent collocation is being deployed by other ILECs, a rebuttable presumption exists, which BA-MA has not refuted, that such collocation is technologically feasible. Since BA-MA did not make an affirmative showing that such collocation arrangement is not technically feasible in Massachusetts, BA- MA must make on-site adjacent collocation available to comply with federal law.

In addition, the Department should explicitly require that BA-MA tariff remote terminal collocation. Remote terminal collocation allows the CLEC to place its own equipment in the outside plant to access the copper portion of a loop served by digital loop carrier. Federal rules mandate that ILECs must provide collocation at the remote terminal. Specifically, the FCC states that its rules are intended to "make collocation available at all accessible terminals on the loop." In addition, it establishes a rebuttable presumption that, once a state has determined that it is technically feasible to unbundle subloops at a designated point, "it will be presumed that it is technically feasible for any incumbent LEC" to provide collocation at the remote terminal, as evidenced by the identical conclusion by the Texas PUC, which requires subloop unbundling at the remote terminal. Thus, BA-MA must allow CLECs to collocate at the remote terminal unless, on a case-by-case basis, they can affirmatively "prove that its own situation differs to such an extent that [such an] arrangement in not technically feasible."

Remote terminal collocation is extremely important for data CLECs such as Rhythms and Covad because it would allow such data CLECs to place DSLAMs in the remote terminal when there is fiber in the feeder—which could otherwise make the loop unsuitable for providing DSL-based services. If Rhythms and Covad are prevented from accessing the copper/fiber interface, they will be artificially limited in the type of services that they can provide. Thus, this Department should order BA-MA to include remote terminal collocation as part of its Tariff offering and not allow BA-MA to evade its obligations under the *Advanced Services Order* and *UNE Remand Order*.

4. <u>The Department Should Order BA-MA to Allow Competitors to Make In-Place Conversion from Virtual to Cageless Physical</u>

The Department should order BA-MA to allow competitors to make in-place conversion from virtual to cageless physical. Currently, the BA-MA proposed Tariff does not allow for in-place conversions. Rather, if a collocating CLEC wants to convert virtual facilities to cageless physical facilities, BA-MA requires that the CLEC disconnect its equipment from its current virtual location and do a new install for the physical CCOE. There is no technical reason to require such a process, and clearly such a requirement will cause a service outage for the CLEC's end users during the disconnect/reconnect time period. Alternatively, BA-MA would require CLECs who do not want to suffer such an outage to build redundant facilities—unnecessarily incurring cost and expense.

Under the collocation alternatives adopted by the FCC in the *Advanced Services Order*, there is absolutely no justification for such a burdensome, cumbersome and expensive process. As discussed above, CLECs are permitted to collocate in a shared, open environment, in as small as one-bay increments. There is no difference between the space requirements of the actual equipment placed in the rack, whether it is virtual or cageless. In-place conversion is just a method to transfer the title of the property. Because there is no technical reason to preclude in-place conversion, the fact that it is consistent with the *Advanced Services Order*, and the overwhelming simplicity, ease, cost-efficiency and reliability of this method of converting from virtual to physical collocation, the Tariff should allow in-place conversions.

BA-MA claims its need for security supports its decision to refuse in-place conversions. This argument is without merit. The Department must not allow BA-MA to use security fears as a delay tactic for establishing competitors' collocation arrangements. BA-MA is asking the Department to subordinate the service of CLEC customers by compelling *certain* outages during a transition from virtual to cageless to allay its fears of *potential* outages for its customers.

BA-MA claims about service outages, ring false considering its proposed alternative—forcing CLECs to disconnect and reconnect services—results in precisely what BA-MA claims it wants to protect against. The only difference is that in the case of conversions, it is solely the CLEC that would suffer the outage. For all these reasons, the Department should foster efficiency and reduce costs by requiring BA-MA to provide in-place conversions.

IV. The Department Should Require Bell Atlantic-Massachusetts To Amend Its Tariff No. 17 To Include XDSL-Capable Loops And High Capacity Levels Of Transport.

A. BA-MA has an Obligation to Provide Requesting Carriers with xDSL Capable Loops.

In order to provide Massachusetts' consumers with a variety of DSL services, CLECs must have access to xDSL-capable loops. Because these loops are a crucial component of all types of DSL services, the FCC has imposed a clear obligation on ILECs, including BA-MA, to provide requesting carriers xDSL-capable loops. As the FCC explained in

affirming this obligation in the *UNE Remand Order*, "[w]ithout access to these [xDSL-capable loops], competitors would be at a significant disadvantage, and the incumbent LEC, rather than the marketplace, would dictate the pace of deployment of advanced services."

1. There is No Competitively Neutral Justification for BA-MA to Refuse to Tariff an xDSL Loop Offering.

Notwithstanding its obligation to provide requesting carriers with nondiscriminatory access to xDSL-capable loops, BA-MA has refused to tariff any rates, terms and/or conditions for this element. BA-MA's proposed unbundled link offering includes an Analog (Basic Link) and a Digital (ISDN Capable Link). As defined, neither of these loops, "guarantee access to the copper loops that are essential to the provision of DSL services on rates terms and conditions that comply with the terms of the 1996 Act and the FCC's orders addressing advanced services." BA-MA does not dispute the fact that its tariffed loops are not xDSL capable and seeks to justify its refusal to include these loops on *its* conclusion that DSL is an "emerging technology" and should not be tariffed. Moreover, according to BA-MA, this proceeding should not address DSL issues because BA-MA has unilaterally chosen not to include "DSL as part of its D.T.E. – Mass. – No. 17 Tariff filing" and it "does not have a planned date to file an [xDSL loop] tariff."

BA-MA attempts to side-step its obligations by asserting that it is fulfilling its requirement to make these loops available by providing xDSL capable loops through its interconnection agreements. In effect, BA-MA is forcing each competitor to negotiate separately for access to these loops, to which the FCC has already determined that CLECs are entitled. Moreover, as Ms. Murray explained, there is "every reason to expect that the prices for DSL-capable loops that BA-MA will seek to impose without the constraint of an approved tariff will adversely affect [the CLECs'] ability to compete in Massachusetts." This in turn will create unnecessary and artificial uncertainty about the prices, terms and conditions under which competitors will be able to obtain the loops needed to provide a wide variety of DSL services throughout the Commonwealth. Finally, because interconnection agreements have a finite term, once those agreements expire, a carrier "has no reasonable certainty on which to base its business pans for Massachusetts."

Thus, notwithstanding BA-MA's assertions to the contrary, BA-MA's refusal to tariff xDSL loops obstructs the development of competition in the Massachusetts' advanced services market. Indeed, the need for nondiscriminatory access to loops is particularly acute since BA-MA and other Bell Atlantic subsidiaries are deploying their own DSL services. While BA-MA has fallen behind schedule on its DSL roll-out in areas outside of Boston and the Route 128 corridor, competitive carriers, such as Rhythms and Covad, are eager to offer their DSL services throughout Massachusetts. Merely because BA-MA is not ready, or able, to serve those other markets, BA-MA should not be permitted to obstruct CLECs from provisioning advanced services to these end-users. Therefore, the

Department should require BA-MA to tariff xDSL capable loops across the entire state, regardless of its own business deployment plans.

2. BA-MA's Consumers Deserve the Same Advantages of a Competitive Advanced Services Market as Consumers in New York and Pennsylvania

The Department should question BA-MA's motives for refusing to tariff an xDSL loop offering when two of BA-MA's sister companies, Bell Atlantic-New York ("BA-NY") and Bell Atlantic Pennsylvania ("BA-PA") are currently offering xDSL loops with permanent recurring and nonrecurring prices. In New York, BA-NY has filed a DDL tariff that incorporates an xDSL loop offering that includes recurring and non-recurring prices. BA-NY has filed prices for DSL loops and nonrecurring charges for loop qualification and loop conditioning. In fact, the "Bell Atlantic-New York studies for loop qualification are based in part on Massachusetts data." Therefore, BA-MA has the necessary costing information to tariff xDSL loops and the Department should require it to do so. Moreover, in Pennsylvania, BA-PA is providing xDSL loops consistent with a global settlement in that state. The Pennsylvania Commission appropriately found that "only with such access can CLECs meet the needs of Pennsylvania consumers that would otherwise go unserved by ILEC service offerings."

Massachusetts' consumers are as deserving of competitive DSL services as are New York and Pennsylvania consumers. In order to expedite the offering of these services in Massachusetts, Rhythms and Covad urge the Department to require BA-MA to provision clean copper loops on an unbundled and nondiscriminatory basis to any requesting CLEC. By mandating this provisioning, the Department will enable CLECs to develop and offer DSL-based advanced services to Massachusetts' consumers on a more expeditious and efficient basis.

B. The Department Should Order BA-MA to Provide CLECs with Comprehensive Loop Characteristic Information

Attendant to the need for clean copper loops for xDSL services is the need for CLECs to know all the physical characteristics of that loop in order to discern its capabilities prior to ordering. To determine which DSL services they are able to provide Massachusetts' consumers, CLECs must have access to all loop information that can affect the provision of xDSL services. As Mr. Williams noted, this information includes, length, whether any devices such as load coils or repeaters are present on the loop, whether the loop includes bridged tap and, if so, the length of the bridged taps, the presence of any Digital Analog Main Lines ("DAMLs"), and whether any portion of the loop traverses Digital Loop Carrier ("DLC"), which is a fiber technology that only a few xDSL services can utilize. The FCC has consistently recognized the significant competitive need for CLEC access to loop make-up information and concludes that CLECs must have "nondiscriminatory access to the same detailed information about the loop that is available to the incumbent."

In order to determine which services can be provided, CLECs must be provided the raw loop data. Yet, when Rhythms or Covad request information about a particular loop, the only information BA-MA provides is whether or not the loop is ADSL capable according to BA-MA's criteria. Further BA-MA imposes a separate tariffed charge for such information. This process is unacceptable. In order to achieve a competitively balanced advanced services market for Massachusetts's consumers, this Department should require BA-MA to incorporate xDSL loops in its Tariff No. 17, including access to BA-MA's loop qualification databases. This tariffed offering is necessary to ensure that BA-MA provides Massachusetts' competitive DSL providers with the information necessary to obtain and provision xDSL loops in a timely, efficient and affordable manner.

C. The Department Should Require BA-MA to Provide More Complete Information on its Transport Offering

In addition to xDSL capable loops and loop make-up information, DSL providers require access to unbundled transport. BA-MA's Tariff fails to provide sufficient information on the locations of available transport capacity, or the provisioning intervals for its OC-3 and OC-12 transport. Without information on the locations at which BA-MA's DS-3 capacity is available, Rhythms and Covad are hindered in planning their rollout in Massachusetts. BA-MA attempts to justify its refusal to provide such information on the basis that such a report would be a "moving target" because by the "time the CLEC got the report, another carrier or BA could have used up a free facility or freed up a used facility." While these reports may change periodically, they still provide competitors a valuable tool for planning their network rollout. In the *Advanced Services Order*, the FCC mandated that ILECs must provide collocation availability reports in order to facilitate planning, even though availability will change with time. The same holds true for transport capacity reports. While it is true *some* of the capacity may be taken after the report is completed, the information in the reports would still be very useful, as some of the transport facilities will certainly remain available. Thus, the Department should require BA-MA to make this information available to CLECs.

Another important factor in developing network planning is the provisioning intervals for transport. While BA-MA includes a tariffed offering with 15-business day provisioning intervals for DS1 and DS3 transport, the intervals for OC-3 and OC-12 transport levels are subject to negotiation. This "will enable BA-MA to indefinitely delay its provision of such transport." The provisioning intervals for OC-3 and OC-12 should be the same as the DS-3 intervals "or some other reasonable interval that BA could justify; but certainly not just 'negotiated.'" As the work intervals for provisioning the DS-3 and OC levels of transport are comparable, BA-MA's Tariff should be revised to provide OC-level transport within the same interval as DS-3 transport.

V. The Tariff and BA-MA's Interpretation Thereof Threatens CLECs Reliance on the Terms and Conditions of Interconnection Agreements

Not only is the Tariff flawed both by commission and omission, but the Tariff's usefulness to purchase collocation and other unbundled elements necessary for CLECs to provide service is in doubt. BA-MA contends that if the terms of the tariff are inconsistent with a prior order of the Department, the tariff takes precedence, even over contract terms of interconnection agreements between BA-MA and CLECs that were approved by Commission Order.

Considerable questions exist regarding the relationship between Tariff No. 17 and existing interconnection agreements between BA-MA and CLECs. BA-MA contends that, based on the Department's Order in DTE 98-15, where contract terms and tariff provisions are inconsistent, the tariff provisions govern. According to this Order, the "Department-arbitrated provisions in the tariff shall supersede corresponding provisions in the existing resale agreements between those parties."

This rule could be interpreted to provide that any time a tariff is approved with a term that is different from a corresponding provision in an interconnection agreement, the interconnection agreement is automatically changed, by operation of law, changed, if the provision had been arbitrated. BA-MA has expanded this interpretation to include *negotiated* agreements as well. Unfortunately, this legal interpretation makes it difficult, if not impossible, for CLECs to plan and pursue business operations in Massachusetts.

The crux of the problem is that after negotiating an agreement, or arbitrating an agreement, or even following a Department Order, BA-MA is free to change the results of such contractual terms at any point by merely filing new tariff provisions. "Where BA-MA submits a tariff for Department approval which modifies a Department decision in the Consolidated Arbitrations, what BA-MA in effect is doing is asking for reconsideration of that decision." By way of example, in the Media One/Greater Media case DTE 99-42/43, and 99-52, the Department explicitly ruled against Bell's request for a geographically relevant interconnection point ("GRIP"). Despite the Department's decision, BA-MA has introduced the GRIP as an issue in this case by its inclusion in the tariff. Further, it has indicated that if Tariff No. 17 is adopted, this term will apply to Media One. If BA-MA does not prevail in this case, it is free to file for a modification to the tariff again. In fact, it is free to file modifications to the tariff at any time with the result that Greater Media/Media One may forever have to litigate a position that was resolved explicitly by order of the Department.

The potential to continue to litigate issues without certain finality not only frustrates CLECs litigating on limited legal budgets, but the uncertainty of an interconnection agreement's terms and conditions make strategic planning problematic. Contract terms that CLECs believe are favorable and which they desire to pick-and-choose may be subject to change. The same logic applies to opting into entire agreements. If a CLEC wants to opt into a particular agreement, BA-MA may change its provisions by filing tariff modifications that are inconsistent with the terms of the contract. Under BA-MA's interpretation of the Department's Order, the new tariff provisions prevail over the (prior, yet in effect) contract's terms. Faced with this uncertainty, a CLEC would likely prefer investing in a state where contractual terms are certain versus investing in a state where

doubt prevails. As a result Massachusetts' consumers will suffer. The Department can solve this dilemma by making it clear that CLECs are free, at their option, to order services through *either* the tariff or through their interconnection agreement. This will remove the uncertainty associated with the tariff/contract interplay and promote, rather than frustrate, competition.

Further aggravating this situation, BA-MA is not obligated to provide notice of changes in the tariff to contracting parties, even if such change affects the relationship of the parties and the terms under which they interact. CLECs must affirmatively check with the Department daily to determine if BA-MA has made a filing in order to preserve the terms and conditions negotiated or won in litigation.

> Neither competitors of BA-MA, nor the Department, should be requested to bear the burden of ferreting out all such proposed modifications and then demanding from BA-MA, through discovery, the justification for such changes. Such a shifting of the responsibility for identifying modifications of existing Department's orders is unfair an unduly advantages the party – BA-MA – seeking the change.

BA-MA should be required to provide direct electronic notice to requesting parties as well as copies of the electronic filing in Microsoft Word (highlighting the changes proposed to tariff No. 17) as well as conventional notice to all local carriers certificated in Massachusetts.

The Department's Order in 98-15, as applied in these circumstances, fails to promote competition. Instead, the Order acts as an investment deterrent. Although this was not the intended effect, it nevertheless appears to be the case. The Department should take action to restrict the tariff's application and limit the tariff's ability to override the contractual rights and obligations of the parties. As witness Hirsch states, "BA-MA's intended scope of Tariff No. 17 may be very broad, and the Department should be certain to limit the reach of Tariff No. 17 so as not to prejudice other Department proceedings or the rights of BA-MA's competitors under existing, and future, interconnection agreements." Therefore, the Department should:

- Clarify that the contractual rights of CLECs should not be subordinated to new tariff provisions, but rather, the tariff provisions should be an additional method by which CLECs can obtain services, at the CLECs' option.
- Allow Tariff 17 to operate as a supplement to interconnection agreements where the interconnection agreement does not provide for a specific service which has recently been made available, e.g., line sharing, or where the parties have expressly provided in their interconnection agreement that a specific rate or service will be made available by BA in accordance with the terms of its tariff.
- Compel BA-MA to provide direct notification to all certificated local carriers advising them of the proposed changes to the tariff.

- Require BA-MA to file the tariff electronically in a Mircrosoft Word file with attachments and support, as well as rates contained in Part M filed in Microsoft Excel and provide service electronically to certificated carriers (as indicated above).

CONCLUSION

For the foregoing reasons, Rhythms and Covad respectfully request that the Department:

A. Reject BA-MA's proposed collocation rates and adopt forward-looking cost-based collocation rates;
B. Order BA-MA to change its Tariff to eliminate the SPOT bay, notice, escort and security requirements from its proposed Tariff No. 17;
C. Order BA-MA to eliminate the 10-foot buffer zone provision from its Tariff No. 17 and allow CLECs to intermingle their equipment with BA-MA's equipment;
D. Reject BA-MA's anticompetitive and unfair space reservation and space reclamation provisions and consolidate functions scattered throughout the central office to maximize space;
E. Order BA-MA to allow CLECs to use available cable racking when connecting collocation arrangements to other CLECs;
F. Reject BA-MA's non-tariffed provisioning intervals and instead adopt a 60-calendar day provisioning interval from the date of receipt of the request for Physical Collocation; and no more than a 30-calendar day interval from the date of receipt of the request for CCOE;
G. Order BA-MA to make adjacent collocation, both on-site and off-site available, at the CLEC's option, in all technically feasible situations, and explicitly order BA-MA to include remote terminal collocation as part of its Tariff offering;
H. Order BA-MA to allow competitors to make in-place conversion from virtual to cageless physical;
I. Order BA-MA to tariff xDSL capable loops across the entire state, and require including access to BA-MA's loop qualification databases, regardless of its own business deployment plans on an unbundled and nondiscriminatory basis to any requesting CLEC;
J. Order BA-MA to provide CLECs with reports regarding the locations of available transport capacity available to CLECs, and to include OC-level transport intervals within the same interval as DS-3 transport in the tariff;
K. Clarify that the Tariff provisions should be an additional method by which CLECs can obtain services, at the CLECs' option;
L. Order BA-MA to provide direct notification to all certificated local carriers advising them of the proposed changes to the tariff; and
M. Order BA-MA to file the tariff electronically in a Microsoft Word file with attachments and support, as well as rates contained in Part M filed in Microsoft Excel and provide service electronically to certificated carriers.

Respectfully Submitted,

By:_____

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February 10, 2000

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I, Leslie LaRose, do hereby certify that on this 10th day of February, 2000, I ha
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